REX v. JAGGAT SINGH & ANOR.

[A. Cr. J. (Gordon-Smith Ag. C.J.) September 16, 1948]

[Singapore — Special Case No. 3 of 1948]

Municipal Ordinance (Cap. 133) s. 195(4) and (b) — Hawking without a licence — Hawking in a prohibited area — Pleas of guilty — Right of appeal — Criminal Procedure Code, (Cap. 21), ss. 296(2), 317, 320 and 322.

In this case the accused had been convicted on their pleas of guilty under s. 195(4) of the Municipal Ordinance. The cases came before the High Court on points of law reserved for its consideration and at the hearing an application was made that the case be dealt with by way of review under s. 320 of the Criminal Procedure Code.

Held: (1) there is no appeal in these cases as laid down in s. 296(2) of the Criminal Procedure Code and that unless there has been some obvious irregularity, illegality or miscarriage of justice, the High Court will not deal with the matter by way of review under s. 320 or s. 322 of the Criminal Procedure Code; (2) there is no appeal against an order for confiscation of goods being hawked made under s. 195(6) of the Municipal Ordinance.

Case referred to:—

(1) *Rex v. Khoo Kee Thye & Ors.* (1936) M.L.J. 243; (1936) S.S.L.R. 138.

SPECIAL CASE STATED.

Gordon-Smith Ag. C.J. : — These cases have come before me on points of law reserved for consideration by the High Court, under section 317 of the Criminal Procedure Code.

Under that section such reservation must be made either at the conclusion of the proceedings or within seven days of judgment being delivered.

In the one case, the accused pleaded guilty and on such plea he was there and then convicted, i.e. on the 24th August.

On the same date, the other accused (Case 2708) claimed trial and was convicted on the 31st August.

I can see no reason whatever for an extension of time being granted in this case, but, alternatively, I am asked to deal with the matter by way of review under section 320, in order to clear up the same points as are set out in the case stated. Rather reluctantly I agree to do so as, in my opinion, the law is quite clear and admits of no argument.

The first point is whether there is any appeal against conviction or sentence.

Both accused were charged respectively under the Municipal Ordinance (Cap. 133) section 195(4) with (a) hawking without a licence and (b) hawking in a prohibited area.

In case 2711 the accused Jaggat Singh pleaded guilty and was convicted and sentenced. The burden of proving that he had in fact, a licence was entirely on him and I am quite satisfied that he understood the nature and effect of his plea of guilty. For some ulterior motive, he failed to disclose the fact that he had a licence, and he gave evidence subsequently in case 2708, a week later, to this effect with details.

In case 2708 Gurubak Singh was similarly convicted on the 31st August.

It is quite clear that under section 296(2) of the Criminal Procedure Code there is no appeal against these convictions and the Magistrate's clerk was quite right in rejecting the attempted appeal by notice dated the 1st September. In a further letter dated the 3rd September Mr. Nathan, on behalf of Jaggat Singh, offers to file an affidavit by the accused that he had not pleaded guilty in his case. Not only has such plea been definitely recorded by the Magistrate but this accused clearly stated in his cross-examination in the Gurubak Singh case on the 31st August "I pleaded guilty to selling without a licence." He would be taking a grave risk of a charge of perjury if he now executes an affidavit to the contrary.

I therefore confirm that there is no appeal in these cases as laid down in section 296(2) and it is useless for advocates to try and get round this provision by attempting to get these cases reviewed by the High Court under section 320 or 322 unless there has been some obvious irregularity, illegality or miscarriage of justice.

It is clear also that there is no appeal against an order for confiscation of goods being hawked as provided for in sub-section (6) of section 195 of the Municipal Ordinance.

In regard to recording pleas of guilty, I would refer to the remarks I made in the case of *Rex v. Khoo Kee Thye & Ors.*[1]

The convictions, sentences and orders in both cases are confirmed.

Order accordingly.